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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/190,246 11/13/98 PARRINGTON M 1038-865MIS

HM22/0322

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EXAMINER

WILSON, M

ART UNIT

PAPER NUMBER

1633

AIR MAIL

DATE MAILED:

03/22/00

**Please find below and/or attached an Office communication concerning this application r
proceeding.**

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/190,246

Applicant(s)
Parrington et al.

Examiner
Wilson, Michael C.

Group Art Unit
1633



☐ Responsive to communication(s) filed on _____.

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-38 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☐ Claim(s) _____ is/are rejected.

☐ Claim(s) _____ is/are objected to.

☒ Claims 1-38 are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1633

DETAILED ACTION

Drawings

1. The drawings are objected to because the drawings submitted by applicants are extremely blurry. The drawings of the plasmids are essential to determine the structure of the nucleic acid sequence made by applicants; however, and the structure of the nucleic acid sequences in the drawings cannot be accurately determined. Correction is required.

Election/Restriction

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
- I. Claims 1, 2, 5-38 drawn to a vector consisting of a respiratory syncytial virus (RSV) and methods of immunizing against RSV, classified in class 514, subclass 44.
 - II. Claims 1-4 and 20, drawn to a vector consisting of a parainfluenza virus (PIV) and methods of immunizing against PIV, classified in class 514, subclass 44.
3. The inventions are distinct, each from the other because of the following reasons:
- Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not capable of use together because the vector encoding RSV is not required to use the vector encoding PIV and vice versa. In addition, RSV and PIV have different modes of


Art Unit: 1633

infection and require different considerations for immunization. The method of immunizing against RSV is materially distinct and separate from immunizing against PIV because the immune response and symptoms of the diseases are materially different.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).



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